

Message Text

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17

ACTION EA-09

INFO OCT-01 ISO-00 PM-04 NSC-05 SP-02 SS-15 L-03 CIAE-00

INR-07 NSAE-00 OMB-01 /047 W
----- 079749

R 020352Z SEP 76

FM AMEMBASSY MANILA
TO SECSTATE WASHDC 9736
INFO SECDEF WASHDC
CINCPAC
CINCPACREPPHIL

UNCLAS MANILA 13410

E.O. 11652: N/A

TAGS: MARR, US, RP

SUBJECT: EMBASSY'S RESPONSE TO DFA DIPLOMATIC NOTE ON CLARK
AIR BASE LEASE WAIVER CLAUSE

REF: MANILA 13152

1. THERE FOLLOWS THE TEXT OF EMBASSY'S DIPLOMATIC NOTE
OF SEPTEMBER 1 IN RESPONSE TO DFA NOTE (REFTEL).

2. BEGIN TEXT.

THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS
ITS COMPLIMENTS TO THE DEPARTMENT OF FOREIGN AFFAIRS
OF THE REPUBLIC OF THE PHILIPPINES AND HAS THE HONOR
TO REFER TO THE DEPARTMENT'S NOTE NO. 76-2095, DATED
AUGUST 27, 1976, CONCERNING A CLAUSE IN A LEASE
FORM (COPY ENCLOSED) WHICH IS SIGNED BY UNITED STATES
AIR FORCE ACTIVE-DUTY PERSONNEL IN LEASING OFF-BASE
HOUSING AT CLARK AIR BASE.

PARA. THE DEPARTMENT HAS MADE CLEAR THE NATURE OF
ITS CONCERN BOTH BY THE TENOR OF THE NOTE ITSELF AND
BY THE FACT THAT IT WAS APPARENTLY RELEASED TO THE
NEWS MEDIA PRIOR TO ITS RECEIPT BY THE EMBASSY.

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THEREFORE, IN ORDER TO AVOID FURTHER MISUNDERSTANDINGS,

THE EMBASSY HAS ASKED UNITED STATES MILITARY AUTHORITIES AT CLARK AIR BASE TO DELETE THE CLAUSE IN QUESTION FROM ALL FORMS USED FOR FUTURE OFF-BASES LEASES.

PARA. HOWEVER, THE EMBASSY WISHES TO POINT OUT TO THE DEPARTMENT THAT THE CONCEPT OF PROVIDING FOR THE POSSIBILITY OF SEARCHES OF LEASED HOUSES OCCUPIED BY UNITED STATES AIR FORCE PERSONNEL WAS DISCUSSED LAST YEAR BY REPRESENTATIVES OF OUR TWO GOVERNMENTS. IN THOSE DISCUSSIONS, TWO SUGGESTIONS WERE EXPLORED IN ORDER TO DEVELOP APPROPRIATE PROCEDURES. THE FIRST WAS THAT ANY SEARCHES SHOULD BE ACCOMPLISHED ONLY IN THE PRESENCE OF PHILIPPINE LAW ENFORCEMENT PERSONNEL SO THAT IN THE EVENT THAT A FILIPINO CITIZEN WERE INVOLVED, THE PHILIPPINE LAW ENFORCEMENT PERSONNEL COULD UNDERTAKE TO HANDLE THAT ASPECT OF THE CASE. THE SECOND WAS A SUGGESTION THAT A CLAUSE BE INSERTED INTO THE LEASE CONTRACT IN WHICH THE UNITED STATES AIR FORCE LESSEE CONSENTED TO PROBABLE CAUSE SEARCHES UNDER THE AUTHORITY OF THE UNITED STATES MANUAL FOR COURTS MARTIAL OF 1969.

PARA. PURSUANT TO THESE DISCUSSIONS BOTH PROCEDURES WERE IMPLEMENTED. IT IS TRUE THAT, WHILE THE PRECISE LANGUAGE OF THE CLAUSE IN QUESTION WAS NOT SPECIFICALLY APPROVED BY THE PHILIPPINE AUTHORITIES, THE CONCEPT OF SUCH A CLAUSE WAS DISCUSSED AND THE UNITED STATES OFFICIALS WERE UNDER THE IMPRESSION THAT THE CONCEPT HAD BEEN APPROVED BY THE APPROPRIATE AUTHORITIES. AS SUCH, THE CLAUSE IN QUESTION WAS AN ATTEMPT MADE IN GOOD FAITH, AFTER CONSULTATIONS WITH AUTHORITIES OF THE GOVERNMENT OF THE PHILIPPINES, TO INSURE COMPLIANCE WITH APPLICABLE LAW AND WAS NOT, AS IMPLIED BY THE NOTE, AN ATTEMPT TO DISREGARD PHILIPPINE LAW OR PHILIPPINE SOVEREIGNTY. THE LEASES CONTAINING THIS CLAUSE WERE, MOREOVER, SIGNED ONLY BY THE UNITED STATES AIR FORCE PERSONNEL.

PARA. IT WOULD NOW APPEAR THAT SOME MISUNDERSTANDING HAS DEVELOPED CONCERNING THE PURPOSE AND INTENT OF THE UNCLASSIFIED

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PROCEDURES DESCRIBED ABOVE. THE EMBASSY THEREFORE BELIEVES THAT IT WOULD BE REASONABLE AND APPROPRIATE FOR THIS MATTER TO BE FURTHER DISCUSSED IN THE SAME FORUM THAT INITIALLY ADDRESSED THE SUBJECT, THE RP/US CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE. SUCH DISCUSSION COULD REEVALUATE THE ENTIRE QUESTION AND DEVELOP APPROPRIATE PROCEDURES TO AVOID FUTURE PROBLEMS. THE EMBASSY THEREFORE INTENDS TO REINSTITUTE

DISCUSSIONS IN THE RP/US CRIMINAL JURISDICTION
IMPLEMENTATION COMMITTEE AT THE NEXT SCHEDULED MEETING
ON SEPTEMBER 10, 1976.

PARA. COMPLIMENTARY CLOSING. END TEXT.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: HOUSING, TEXT, DIPLOMATIC NOTES, MILITARY BASE AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 02 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976MANILA13410
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760332-1232
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760998/aaaadfuw.tel
Line Count: 121
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 MANILA 13152
Review Action: RELEASED, APPROVED
Review Authority: cahillha
Review Comment: n/a
Review Content Flags:
Review Date: 26 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <26 APR 2004 by MaustMC>; APPROVED <29 DEC 2004 by cahillha>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EMBASSY'S RESPONSE TO DFA DIPLOMATIC NOTE ON CLARK AIR BASE LEASE WAIVER CLAUSE
TAGS: MARR, US, RP
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006